APPENDIX A.

Statute and Rule Involved

Ill. Rev. Stats. 1963, Ch. 24, Sec. 1-4-6.

Indemnification for injuries caused by policeman—Notice —Liability for injuries incurred while assisting policeman. § 1-4-6. In case any injury to the person or property of another is caused by a member of the police department of a municipality having a population of less than 500,000, while the member is engaged in the performance of his duties as a policeman, and without the contributory negligence of the injured person or the owner of the injured property, or the agent or servant of the injured person or owner, the municipality in whose behalf the member of the municipal police department is performing his duties as policeman shall indemnify the policeman for any judgment recovered against him as the result of such injury, except where the injury results from the wilful misconduct of the policeman, to the extent of not to exceed $50,000 including costs of suit. Any policeman, or any person who, at the time of performing such an act complained of, was a policeman, who is made a party defendant to any such action shall, within 10 days of service of process upon him, notify the municipality by whom he is or was employed, of the fact that the action has been instituted, and that he has been made a party defendant to the same. Such notice shall be in writing, and shall be filed in the office of the city attorney or corporation counsel, if there is a city attorney or corporation counsel, and also in the office of the municipal clerk, either by himself, his agent, or attorney. The notice shall state in substance, that such policeman, (naming him), has been served with process and made a party defendant to an action wherein it is claimed that a person has suffered injury to his person or property caused by such policeman; stating the title and number of the case; the court wherein the same is pending; and the date such policeman was served with process in such action, and made a party de-

fendant thereto. The municipality which is or may be liable to indemnify the policeman shall have the right to intervene in the suit against the policeman, and shall be permitted to appear and defend. The duty of the city to indemnify any such policeman for any judgment recovered against him shall be conditioned upon receiving notice of the filing of any such action in the manner and form hereinabove described. . . .

• • •

Federal Rules of Civil Procedure, Rule 18(b).—

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

APPENDIX B.

Judgment Order of District Court and Opinion and Orders of Court of Appeals.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 63 C 1482) * *

ORDER

This cause coming on to be heard on motion of defendant Village of Niles to dismiss Counts III, IV and V on the grounds that this court has no jurisdiction to hear the allegations contained in said Counts, the court having considered the arguments of counsel and the brief filed in support of and in opposition to said motion, and being fully advised in the premises:

It Is Hereby Ordered that the motion to dismiss Counts III, IV and V filed by defendant Village of Niles be and hereby is granted and said Counts III, IV and V be and hereby are dismissed with prejudice and without costs as to defendant Village of Niles, and, the Court expressly finding that there is no just reason for delay, final judgment shall be and hereby is entered dismissing Counts III, IV and V as to the defendant Village of Niles.

Enter:

/s/ Edwin A. Robson
Judge

Dated: Dec 3 1963

* * *

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 14495 SEPTEMBER TERM, 1963 APRIL SESSION, 1964

RONALD J. WOJTAS, a minor, by his next friend, JOHN C. WOJTAS, RALPH JOSEPH SCHULTE, a minor, by his next friend, WILLIAM SCHULTE, JOHN C. WOJTAS and SOPHIE WOJTAS,
Plaintiffs-Appellants,

v.

VILLAGE OF NILES, a municipal corporation of the State of Illinois,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

July 6, 1964

Before SCHNACKENBERG, KNOCH and CASTLE, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* This action was brought by Ronald J. Wojtas, a minor, by his next friend, John C. Wojtas, Ralph Joseph Schulte, a minor, by his next friend, William Schulte, John C. Wojtas and Sophie Wojtas, plaintiffs, in the district court against the Village of Niles, a municipal corporation of the State of Illinois, defendant, and certain named police officers of the village.[1]

[1] Edward P. Dennis, Clarence Emriksen, William Terpinas, Frank Wichlak, John Kraus, Frank Stankowicz, Jr., Joseph Wieboldt and Philip Cunningham.

Counts One and Two of the complaint asserted actions for damages, under the federal civil rights act, 42 U.S.C.A. §§ 1983, 1985 and 1986, against the police officers. The Village of Niles was not named as a defendant in said counts. Under counts Three, Four and Five, plaintiffs set forth actions based on Illinois state law and sought damages for false arrest and imprisonment, malicious prosecution and assault.[2]

The action is awaiting trial on the merits in the district court. Plaintiffs' brief frankly states that this appeal is predicated solely on the "error" of the court below in entering a final judgment order dismissing counts Three, Four and Five, as to defendant-appellee Village of Niles.

No diversity of citizenship is asserted in the complaint.

1. The sole contested issue before us is whether plaintiffs may maintain this action against the defendant village in a federal district court, on a cause of action arising under Illinois state law, by joining it in the same complaint with their cause of action under the federal civil rights act against police officers of the village who were acting as such when the events complained of occurred.

Because *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U.S. 175 (1909) was discussed in *Hurn* v. *Oursler*, 289 U.S. 238, 245 (1933), relied upon by plaintiffs, we shall first discuss the *Siler* case.

At 191, the Supreme Court held that when a federal district court (there known as the Circuit Court of the United States for the Eastern District of Kentucky) was presented by plaintiff with contentions that a state statute was invalid because it violated the federal constitution, it properly obtained jurisdiction, and having properly obtained it the court had the right to decide *all* the questions in the case, even though it decided the federal question adversely to the party raising it, or even if it omitted to decide it at all, but decided the case on *local or state questions only*.

[2] Count Six involved a claim for injunction against all defendants, including the village, under the civil rights act. It filed an answer to count Six.

In *Oursler*, at 245, *Siler* is recognized as stating a general rule broadly and without qualification. However, the court added that it is "a rule of general application, and we hold it to be such—as controlling in patent, trademark, and copyright cases as it was in the cases where it is announced." However, the court then said, at 245:

> "But the rule does not go so far as to permit a federal court to assume jurisdiction of a separate and distinct non-federal cause of action because it is joined in the same complaint with a federal cause of action. The distinction to be observed is between a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character. In the former, where the federal question averred is not plainly wanting in substance, the federal court, even though the federal ground be not established, may nevertheless retain and dispose of the case upon the non-federal *ground*; in the latter it may not do so upon the non-federal *cause of action*."

In *Armstrong* v. *Nu-Enamel Corp.*, 305 U.S. 315 (1938), the court considered, at 324-5, the impact of *Oursler*. It said that in *Armstrong* the court's jurisdiction of one cause of action,

> "the alleged infringement of the trade-mark, persists to dealwith all grounds supporting it, including unfair competition with the marked article. The cause of action is the interference with the exclusive right to use the mark 'Nu-Enamel.' If it is a properly registered trade-mark, a ground to support the cause of action is violation of the Trade-Mark Act. If it is not a properly registered trade-mark, the ground is unfair competition at common law. The facts supporting a suit for infringement and one for unfair competition are substantially the same. They constitute and make plain the wrong complained of, the violation of the right to exclusive use."

Further, in *Armstrong*, at 325, the court added:

> "• • • Registration of 'Nu-Enamel' furnished a substantial ground for federal jurisdiction. That jurisdiction should be continued to determine, on substantially the same facts, the issue of unfair competition."

However, at 333, in note 19, the court said:

> "Since neither party has relied *upon state law*, we do not consider any effect it might have on our conclusions." (Italics supplied.)

We do not consider that anything said in *Armstrong* supports the contention of plaintiffs in the case at bar.

We hold that the mere incorporation of counts Three, Four and Five, based upon Illinois law, in a complaint otherwise based entirely upon alleged violations of a federal statute and the fourteenth amendment to the constitution of the United States, does not give the district court jurisdiction of those three counts.

2. Moreover, the lack of diversity of citizenship between plaintiffs and the Village of Niles, an Illinois municipal corporation, is fatal to the district court's jurisdiction to adjudicate upon these three counts. *McPherson* v. *Hoffman*, 6 Cir., 275 F. 2d 466, 470 (1960); *Pearce* v. *Pennsylvania R. Co.*, 3 Cir., 162 F. 2d 524 (1947), cert. denied, 332 U.S. 765; *Wasserman* v. *Perugini*, 2 Cir., 173 F. 2d 405 (1949); *Kern* v. *Standard Oil Company*, 8 Cir., 228 F. 2d 699, 701 (1956); and *Kerr* v. *Compagnie de Ultramar*, 2 Cir., 250 F. 2d 860 (1958) at 864, where the court said:

> "• • • Because, however, of the limitations on federal jurisdiction, such otherwise proper joinder destroys the jurisdiction of the court. • • •"

For these reasons, the judgment order from which this appeal has been taken is affirmed.

JUDGMENT ORDER AFFIRMED.

• • •

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Monday, July 6, 1964

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Win G. Knoch, Circuit Judge
Hon. Latham Castle, Circuit Judge

RONALD J. WOJTAS, a minor, etc., et al.,
Plaintiffs-Appellants,

No. 14495 vs.

VILLAGE OF NILES, a municipal corporation of the State of Illinois,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment order of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

• • •

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Thursday, July 23, 1964

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Win G. Knoch, Circuit Judge
Hon. Latham Castle, Circuit Judge

RONALD J. WOJTAS, et al.,
Plaintiffs-Appellants,

No. 14495 vs.

VILLAGE OF NILES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for a rehearing of this cause, filed by plaintiffs-appellants, be, and the same is hereby DENIED.

APPENDIX C

Table of States in Which Municipal Corporations May Be Held Liable for Misconduct by Their Policemen.[10]

I. *States and city in which governmental immunity has been abolished by statute or ordinance.*

1. Alabama—Code 1940, Title 37, § 502
2. California—Deering's Govt. Case Ann., §§ 815.2, 825, 825.2
3. Hawaii—1963 Supp. to Rev. Laws of 1955, § 245-A-2
4. Minnesota—Minn. Stats. Ann. 1963, § 466.02
5. New York—29A McKinney's Consolidated Laws of New York, Court of Claims Act, § 8 (1963)
6. Washington—Rev. Code of Wash. Ann., Title 4, § 4.92.090, as amended in cum. supp. 1963
7. Philadelphia, Pa.—Philadelphia Code, § 21-701.

II. *States in which governmental immunity of municipal corporations has been abolished by court decision.*

1. Alaska—*Scheele* v. *City of Anchorage,* 385 P. 2d 582 (1963)
2. Arizona—*Stone* v. *Arizona Highway Commission,* 93 Ariz. 384, 381 P. 2d 107 (1963)
3. Florida—*Hargrove* v. *Town of Cocoa Beach, Fla.,* 96 So. 2d 130 (1957)
4. Illinois—*Molitor* v. *Kaneland Community Unit Dist. No. 302,* 18 Ill. 2d 11, 163 N.E. 2d 89, 86 A.L.R. 2d 469 (1959), *Lynwood* v. *Decatur Park District,* 26 Ill. App. 2d 431 at 435, 168 N.E. 2d 185 (3d Dist. 1960)
5. Kentucky—*Haney* v. *Lexington,* .....Ky. ....., ... S. W. 2d ..... (1964)

[10] Some states are listed under more than one heading.

6. Michigan—*Williams* v. *City of Detroit*, 364 Mich. 231, 111 N.W. 2d 1 (1961)
7. New Jersey—*McAndrew* v. *Mularchuck*, 33 N.J. 172, 162 A. 2d 820 (1960)
8. New York—*McCrink* v. *New York*, 296 N.Y. 99, 71 N.E. 2d 419 (1947), *McCarthy* v. *City of Saratoga Springs*, 269 A. D. 469, 54 N.Y.S. 2d 600, app. den., 269 A. D. 912, 57 N.Y.S. 2d 653 (1945).
9. Nevada—*Rice* v. *Clark County, Nev.*, 79 Nev. 253, 382 P. 2d 605 (1963) (sovereign immunity does not extend to counties to relieve them of negligence in operation of roads)
10. Wisconsin—*Holtyz* v. *City of Milwaukee*, 17 Wis. 2d 26, 115 N.W. 2d 618 (1962)
11. Washington—*Kelso* v. *City of Tacoma*, 63 Wash. Decs. 2d 912, 390 P. 2d 2 (1964)

III. *States in which the doctrine of governmental immunity has been altered or abolished in cases where the municipal corporation has insurance.*

1. Connecticut—Gen. Stats. § 7-465
2. Idaho—Gen. Laws Ann. § 41-3505
3. Indiana—*Flowers* v. *Board of Commissioners*, 240 Ind. 668, 168 N.E. 2d 224 (1960)
4. Missouri—Ann. Mo. Stats. 1963 cum. supp. § 71.185
5. New Hampshire—Rev. Stats. Ann., Vol., 4 § 412.3
6. North Dakota—N.D. Century Code Vol. 8, § 40-43-07
7. Oregon—Ore. Rev. Stats., Vol. 2 1963, § 243.110
8. Tennessee—*Ballew* v. *City of Chattanooga*, 205 Tenn. 289, 326 S W. 2d 466 (1952)
9. Vermont—Title 12, Vt. Stats. cum. supp. 1963, § 5601, Title 29, cum. supp. 1963, § 1403

10. Wyoming—Wyo. Stats. Ann., Vol. 5, cum. supp. 1963, §§ 15-20.6, 15-20.7

IV. *States in which governmental employees are indemnified for judgments obtained against them for torts committed while carrying out their duties.*

1. Connecticut—Gen. Stats. § 7-465
2. Illinois—Ill. Rev. Stats. 1963, Ch. 24, §§ 1-4-5, 1-4-6